IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22495 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VINOD AMRSINGH SHAIKHAVAT - Petitioner(s)

Versus

UNION OF INDIA & 3 - Respondent(s)

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Appearance :

MR SUDHANSHU S PATEL for Petitioner(s) : 1,
NOTICE NOT RECD BACK for Respondent(s) : 1 - 2.
NOTICE SERVED BY DS for Respondent(s) : 1 - 4.
MR MUKESH A PATEL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 05/12/2005

ORAL JUDGMENT

1.Rule. Ms. Megha Jani, learned advocate waives service of Rule on behalf of the respondents.

2.With the consent of the learned advocates appearing on behalf of the parties, the matter is taken up for final hearing today.

3.In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the demand notice dated 10.11.2005 issued by the respondent No.4-the Chief Parcel Supervisor, Western Railway, Valsad by which, the petitioner is called upon to pay an amount of Rs.6,15,720/- under the head of under charges. The petitioner has also further prayed for an appropriate writ, direction or order directing the respondents to release 100 bags of betel nuts which have been withheld on the basis of the aforesaid demand notice dated 10.11.2005.

4.The parties do not press for detail reasoned order as this Court proposes to set aside the demand notice mainly on the ground that the same is in the breach of the principals of natural justice.

5.Mr. S.S.Patel, learned advocate appearing on behalf of the petitioner has submitted that before issuing the

aforesaid demand notice dated 10.11.2005 directing the petitioner to pay aforesaid amount of Rs.6,15,720/- under the head of under charges neither any opportunity has been given to the petitioner nor any procedure as required under the provisions of the Railways Act; 1989 has been followed. He has also further submitted that even the withholding of 100 bags of betel nuts for non-payment of the aforesaid amount of Rs.6,15,720/- is also illegal and arbitrary which requires to be quashed and set aside.

6.Ms. Jani, learned advocate appearing on behalf of the respondents is not in a position to satisfy this Court satisfactorily that whether before the impugned demand notice issued, any opportunity has been given to the petitioner or not. It is a cardinal principle of law that when any adverse order is passed having civil consequences, a person against whom order is proposed to be passed is required to be heard and is required to be given opportunity of hearing. As the impugned demand notice dated 10.11.2005 issued without issuing any notice and/or without giving any opportunity of being heard to the petitioner and the petitioner is called upon to pay an amount of Rs.6,15,720/- under the head

of under charges, the same is against the principles of natural justice and the same is required to be quashed and set aside. So far as withholding of 100 begs of betel nuts are concerned, the respondents are required to be directed to release the same on furnishing security by the petitioner to the satisfaction of the Railway Authorities so that if ultimately any order is passed of the remand, the same can be recovered from the petitioner.

7. For the reasons stated above, the petition succeeds in part. The impugned demand notice dated 10.11.2005 is hereby quashed and set aside and the matter is remanded to the Railway Authorities for passing an appropriate order in accordance with law and on merits after giving an opportunity to the petitioner. It is, however, made clear that this Court has not expressed any opinion on the merits of the case and the impugned demand notice has been set aside only on the ground that the same is in breach of principles of natural justice. It will be open for the petitioner also to contend and take all the possible defenses available to the petitioner under the law and the contentions which are also taken in the present Special Civil Application and the Railway

Authorities are directed to consider the same. So far as release of 100 begs of betel nuts are concerned, the respondents are directed to release the same on furnishing the security for an amount of Rs.6 Lacs before the Railways Authorities within a period of 15 days from today.

8.Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

Direct Service is permitted.

(M.R.SHAH, J.)

kdc.